Customer No.: 24498
RCA 89041
Serial No.: 09/190,309
Response Date: April 11, 2007

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicant: Schneidewend et al.

Serial No: 09/190,309

Filed: November 12, 1998

Examiner: Jason P. Salce

Art Unit: 2623

For: A SYSTEM FOR PROCESSING PROGRAMS AND SYSTEM TIMING
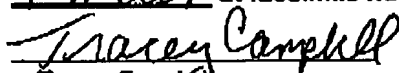   INFORMATION DERIVED FROM MULTIPLE BROADCAST SOURCES

Mail Stop Appeal Brief-Patents
Hon. Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

APPEAL BRIEF

Applicant appeals the status of Claims 1-19 as rejected in the Final office action of

January 16, 2007, and as presented in response to the non-final Office Action dated August 18,

2006, pursuant to the Notice of Appeal filed on April 11, 2007 and submits this appeal brief.

CERTIFICATE OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via facsimile to Mail Stop
Amendment, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 2313-1450 on
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Tracey Campbell
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1. Real Party in Interest

The real party in interest is THOMSON LICENSING LLC, the Successor in interest to the assignee of the entire right title and interest in and to the subject application by virtue of an assignment recorded with the Patent Office on November 12, 1998 at reel/frame 9585/0746.

2. Related Appeals and Interferences

None.

3. Status of Claims

Claims 1-19 are pending, stand rejected and are under appeal. A copy of the Claims 1-19, as they currently stand, is presented in Appendix I.

4. Status of Amendments

An Amendment under 37 CFR §1.111, mailed to the PTO on October 30, 2006 in response to the non-final Office Action dated August 18, 2006, was entered. No amendments were filed subsequent to the mailing of the Final Office Action dated January 16, 2007.

5. Summary of Claimed Subject Matter

Claim 1 is directed to a system for processing programs and system timing derived from multiple broadcast sources. Claim 16 is directed to a method for processing programs and system timing derived from multiple broadcast sources.

The processor recited in claim 1 may be described at, e.g., page 5, lines 7-22.

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The processor recited in claim 1 may involve, e.g.. element 60 of FIG. 1.

The EPG recited in claim 1 may be described at, e.g., page 6, lines 25-26.

The selection of first and second programs from first and second program sources, and the selection of first and second program processing functions, may be described at, e.g., page 9, lines 14-26.

The tuner recited in claim 1 may be described at, e.g., page 5, lines 23-36, and page 9, line 39 – page 10, line 4.

The tuner recited in claim 1 may involve, e.g., elements 13, 15, 17 and 100 of FIG. 1.

The first current time reference information (for the first program) recited in claim 1 may be described at, e.g., page 10, lines 13-15.

The synchronizing of the scheduling clock with a clock of the first program source as recited in claim 1 may be described at, e.g., page 11, lines 37-41.

The second current time reference information (for the second program) recited in claim 1 may be described at, e.g., page 20, lines 19-20 and 21-23.

The synchronizing of the scheduling clock with a clock of the second program source as recited in claim 1 may be described at, e.g.. page 11, lines 37-41 and page 12, lines 20-24.

The derivation of a first scheduling clock based on the first current time reference information as recited in claim 1 may be described at, e.g., page 10, lines 19-40.

The synchronization of the clock with the first corresponding program source as recited in claim 1 may be described at page 11, lines 37-41.

The initiation of the first processing function as recited in claim 1 may be described at page 12, lines 33-36.

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The derivation of a second scheduling clock based on the second current time reference information as recited in claim 1 may be described at, e.g., page 10, lines 19-40 and page 14, lines 19-22.

The synchronization of the clock with the second corresponding program source as recited in claim 1 may be described at, e.g., page 11, lines 37-41 and page 14, lines 19-22.

The initiation of the second processing function as recited in claim 1 may be described at, e.g., page 12, lines 33-36 and page 14, lines 19-22.

The receiving, by an electronic program guide, as recited in claim 16 may be described at, page 9, lines 6-11.

The receiving, by an electronic program guide, as recited in claim 16, may involve step 203 of FIG. 2.

The receiving, by a tuner, as recited in claim 16, may be described at page 9, line 39 – page 10, line 9.

The receiving, by a tuner, as recited in claim 16, may involve steps 205 and 210 of FIG. 2.

The deriving a first scheduling clock, as recited in claim 16, may be described at page 10, lines 19-29 and page 11, lines 34-41. The first scheduling clock being synchronized with the clock of the first program source, as recited in claim 16, may be described at, e.g., page 11, lines 37-41.

The deriving a first scheduling clock, as recited in claim 16, may involve step 215 and 220 of FIG. 2.

The initiation of a first program processing function, as recited in claim 16, may be

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described at page 12, lines 33-36.

The initiating of a first program processing function, as recited in claim 16, may involve step 225 of FIG. 2.

The deriving a second scheduling clock, as recited in claim 16, may be described at page 10, lines 19-29, page 11, lines 34-41 and page 14, lines 23-30.

The deriving a second scheduling clock, as recited in claim 16, may involve steps 215 and 220 of FIG. 2.

The initiation of a second program processing function, as recited in claim 16, may be described at page 12, lines 33-36 and page 14, lines 23-30.

The initiating of a first program processing function, as recited in claim 16, may involve step 225 and 220 of FIG. 2.

6.   **Grounds of Rejection to be Reviewed on Appeal**

Claims 1-2, 4-6, 10-11, and 13-17 stand rejected under 35 U.S.C. §102(b) as being anticipated by U.S. Patent No. 5,379,268 to Young et al. (hereinafter also referred to as "Young" in short) and this rejection is presented for review in this Appeal.

Claims 3 and 18 stand rejected under 35 U.S.C. §103(a) over Young in view of U.S. Patent No. 5,619,274 ("Roop"). Claim 7 stands rejected under 35 U.S.C. §103(a) over Young in view of Program and System Information Protocol For Terrestrial Broadcast and Cable document ("ATSC") in further view of U.S. Patent No. 5,561,461 ("Landis"). Claim 12 stands rejected under 35 U.S.C. §103(a) over Young in view of ATSC. Claims 8-9 and 19 stand rejected under 35 U.S.C. §103(a) over Young in view of U.S. Patent No. 5,808,694 ("Usui"). These rejections

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are presented for review in this Appeal, although separate arguments will not be presented, as

indicated in the following grouping of claims.

Regarding the grouping of the Claims. (1) claims 2-14 stand or fall with Claim 1, and (2)

claims 17-19 stand or fall with claim 16. Further, although claim 15 may be allowed when claim

1 is allowed, claim 15 may only fall by itself.

7.   Argument

A.   Introduction

The present invention provides a novel solution to the problems of using system timing

information for scheduling program processing functions and for displaying a current time to the

user. The claims of the pending invention include novel features not shown in the cited

references and that have already been pointed out to the Examiner. These features provide

significant advantages over the prior art and dispense with prior art problems, such as the use of

system timing information for providing a time clock reference which provides a time at which a

specific program is to be broadcast by the broadcast source (see Applicant's specification, p. 2,

lines 21-23.

It is respectfully asserted that independent claims 1 and 16, as well as dependent claim

15, are each patentably distinct and not anticipated by the cited reference in their own right.

These claims are each addressed below.

B.   Regarding Claims 1 and 16, Young does NOT Disclose or Suggest (1) Receiving

First and Second Current Time Reference Information from Two Different Program

Sources, and (2) Synchronizing a Scheduling Clock with a Clock from Two Different

Program Sources

For a claim to be anticipated under 35 U.S.C. §102, all elements of the claim must be

found in a single prior art reference (see, e.g., Scripps Clinic & Research Found. v. Genentech

Inc., 927 F.2d 1565, 1576, 18 U.S.P.Q.2d. 1001, 1010 (Fed. Cir. 1991)). The identical invention

must be shown in as complete detail as is contained in the claim. (See MPEP § 2131). The single

prior art reference must disclose all of the elements of the claimed invention functioning

essentially in the same manner (see, e.g., Shanklin Corp. v. Springfield Photo Mount Corp, 521

F.2d 609 (1st Cir. 1975)).

The Examiner rejected claims 1-2, 4-6, 10-11 and 13-17 as being anticipated under 35

U.S.C. 102(b) by Young et al. The Examiner contends that the cited reference discloses each and

every element of applicant's invention.

Young et al. is directed to a user interface for a television schedule system. In particular,

Young et al is directed to providing a user interface that compensates for, e.g., the particular

nature of the television schedule information (Col. 2, lines 38-39), for an irregular grid format of

the television schedule information (Col. 2, lines 40-41), and for limited resolution of the

television display (Col. 2, lines 44-45). In further detail, Young et al. provides "Screen (10) for a

user interface of a television schedule system and process consists of an array (24) of irregular

cells (26), which vary in length, corresponding to different television program lengths of one half

hour to one-and-one half hours or more. The array is arranged as three columns (28) of one-half

hour in duration, and twelve rows (30) of program listings. Some of the program listings overlap

two or more of the columns (28) because of their length. Because of the widely varying length of

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the cells (26), if a conventional cursor used to select a cell location were to simply step from one cell to another, the result would be abrupt changes in the screen (10) as the cursor moved from a cell (26) of several hours length to an adjacent cell in the same row. An effective way of taming the motion is to assume that behind every array (24) is an underlying array of regular cells. By restricting cursor movements to the regular cells, abrupt screen changes will be avoided. With the cursor (32), the entire cell (26) is 3-D highlighted, using a conventional offset shadow (34). The offset shadow (34) is a black bar that underlines the entire cell and wraps around the right edge of the cell. To tag the underlying position--which defines where the cursor (32) is and thus, where it will move next--portions (36) of the black bar outside the current underlying position are segmented, while the current position is painted solid." (Young et al. Abstract).

Young et al. does not disclose, nor remotely suggest "a tuner operable by the processor to receive (1) for the first program, first current time reference information from a first corresponding program source, wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source, and (2) for the second program, second current time reference information from a second corresponding program source, wherein the second current time reference information provides information for synchronizing a scheduling clock with a clock of the second corresponding program source" (as recited in Applicant's claim 1, underlining added for emphasis).

In addition, Young et al does not disclose, nor remotely suggest "receiving, by a tuner, (1) a first current time reference information from the first program source, wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first program source, and (2) a second current time reference information from the

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second program source, wherein the second current time reference information provides

information for synchronizing a scheduling clock with a clock of the second program source" (as

recited in Applicant's claim 16, underlining added for emphasis).

As indicated in the above-quoted portions of claims 1 and 16, we receive information

from two program sources, and the information is used to synchronize a scheduling clock with

clocks from these two program sources. Even assuming that Young teaches synchronizing a

clock, Young does not describe that the clock is synchronized with a clock from a program

source. Moreover, Young does not remotely suggest synchronizing a scheduling clock with a

clock from two program sources, or even receiving current time reference information from two

program sources.

Rather, as described above, Young describes an improved visual display of program

guide data. Additionally, Young describes that "Other information transmitted to the

schedule/tape controller 180 and stored in the system RAM memory 240 includes clock update

data to set system clock 230 automatically" (col. 13, lines 3-6). This is as close as Young gets to

describing either (1) synchronization or (2) receiving current time reference information from a

program source that can be used to synchronize clocks. However, Young does not describe that

the "clock update data" comes from a program source, and even more clearly does not describe

that a scheduling clock is synchronized with clocks from two different program sources.

Young's failure to even suggest these features of our claims 1 and 16 is not surprising. As

described above, Young is directed to an improved display of program guide data.

Young's failure to describe our claimed inventions is also evident by the Examiner's

failure to identify all of the claimed recitations in Young. The Examiner has associated at least

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two separate claim recitations with the same element in Young. Specifically, the Examiner has

identified both the recited "first current time reference information" and the recited "clock of the

first corresponding program source" with the scheduled broadcast time of a program (see page 3

of the Office Action, first full paragraph). The Examiner states (underlining added) that:

> Young also discloses a tuner (see tuner 202 in Figure 22A) operable by the processor to
>
> receive for the first program, first current time reference information from a first
>
> corresponding source (see Column 12, lines 58-61 for receiving <u>EPG information</u> and
>
> Figure 1 for the EPG information containing programs, which are displayed for a specific
>
> time period ... wherein the first current time reference information provides information
>
> for synchronizing a scheduling clock with a clock of a first corresponding program source
>
> (see Column 12, line 58 through Column 13, line 24 for using the incoming <u>EPG</u>
>
> <u>information (which includes current time reference information</u> for each program from
>
> each program (channel) source) to synchronize the scheduling clock (clock used to
>
> determine when to trigger a recording event) with a <u>clock of the first corresponding</u>
>
> <u>program source (the time in the EPG data used to determine what time and channel to</u>
>
> <u>start the recording function)</u>).

That is, the Examiner points to the received EPG information as including a scheduled broadcast

time, and states that the scheduled broadcast time corresponds to both the recited "first current

time reference information" and the recited "clock of the first corresponding program source".

This completely reads out one of our claimed recitations. The Examiner does this again for the

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"second current time reference information" (underlining added) and the "clock of the second corresponding program source" (underlining added) (see page 3 of the Office Action, second full paragraph, extending to page 4). As a result, the Examiner completely reads out two of our claimed recitations. Accordingly, the Examiner has failed to present a proper *prima facie* case.

For at least the above reasons, Young does NOT anticipate claims 1 or 16. Further, the Office Action does NOT present a proper *prima facie* case. Accordingly, Applicant respectfully requests withdrawal of the rejections of claims 1 and 16 and the allowance of all claims.

C. Regarding Claim 15, Young does NOT Disclose Two Separately Maintained Scheduling Clocks

The Examiner is reading the recited "scheduling clock" on the EPG information that identifies the scheduled broadcast time. This is shown clearly by the Examiner at page 7 of the Office Action which states (underlining added for emphasis):

> Referring to claim 15, Young discloses that the processor is programmed to maintain, for at least a period of time, both the first and second scheduling clock (see again Column 13 Lines 13-24 for maintaining the scheduled times (first and second scheduling clock for a first and second program, respectively) until the system clock 230 matches the scheduled program times (transmitted with the EPG information)).

However, no synchronization occurs with respect to the data (the data merely indicating the scheduled broadcast times). "Synchronization" of clocks is a well understood term in the art, and merely copying a piece of data does not synchronize any clocks. Claim 1, upon which claim 15 depends, recites that the processor derives two scheduling clocks that are each synchronized

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with the clock of a corresponding program source. In addition, claim 15 requires that these

scheduling clocks are both maintained, reciting that a "processor is programmed to <u>maintain</u>, for

at least a period of time, <u>both the first scheduling cock and the second scheduling clock</u>"

(underlining added for emphasis). The Office Action is thus deficient and fails to present a

proper *prima facie* case.

The only clock in Young that is even arguably synchronized is Young's system clock that

is updated. as described at column 13, lines 3-8 and discussed above. However. it is clear that

Young has only one system clock, and therefore could only possibly disclose one of the recited

scheduling clocks. Accordingly, Young does not even remotely suggest the two separately

maintained (and synchronized) scheduling clocks of claim 15.

For at least the above reasons, Applicant respectfully requests withdrawal of the rejection

of claim 15, and allowance of claim 15.

D.   Conclusion

As stated above, in order for a single reference to anticipate an invention, the reference

must disclose the identical invention, including each and every element of the claimed subject

matter. That is, for anticipation under 35 USC 102(a), the <u>identical</u> invention must be shown in

as complete detail as is contained in the claim. (See MPEP § 2131). The single prior art reference

must disclose all of the elements of the claimed invention functioning essentially in the same

manner (see, e.g., <u>Shanklin Corp. v. Springfield Photo Mount Corp.</u>, 521 F.2d 609 (1st Cir.

1975)). Furthermore, in order to anticipate an apparatus claim, the prior art must not only

possess the claimed structure, but also must posses at least the capability of performing the

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functions required by the apparatus claim, and it is the Examiner's burden to establish the reasonableness of believing that such functional limitations are inherent characteristic of the prior art apparatus. See, *Ex parte Levy*, 17 USPQ2d 1461, 1463-64 (Bd. Pat. App. & Int. 1990) and *Ex parte Skinner*, 2 USPW2d 1788, 1789 (Bd. Pat. App. & Int. 1986). It is respectfully asserted that the Examiner has failed to meet this burden in the Examination and rejection under §102(b).

Thus, for at least the above-discussed reasons, Young fails to disclose or suggest the recited features of claims 1 and 16, and the additional recited features of claim 15. Accordingly, Applicant respectfully requests that the Board reverse the rejections of claims 1-2, 4-6, 10-11 and 13-17 under 35 U.S.C. §102(b). Further, because independent claims 1 and 16, as well as dependent claim 15, have no further rejections, Applicant respectfully requests that the Board allow claims 1 and 16 and all claims dependent thereon, resulting in the allowance of all pending claims 1-19.

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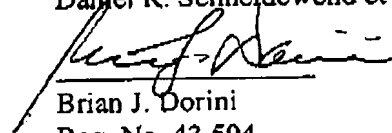Serial No.: 09/190,309
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It is believed that no additional fees or charges are currently due. However, in the event

that any additional fees or charges are required at this time in connection with the application.

they may be charged to applicant's Deposit Account No. 07-0832.

Respectfully submitted,

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8. CLAIMS APPENDIX

1. (Previously presented) A system comprising:

a processor for providing an electronic program guide (EPG), the EPG operable by a user (1) to select a first program and a second program received from corresponding programs sources and (2) to select a first program processing function for the first program and (3) to select a second program processing function for the second program;

a tuner operable by the processor to receive (1) for the first program, first current time reference information from a first corresponding program source, wherein the first current time reference information provides information for synchronizing a scheduling clock with a clock of the first corresponding program source, and (2) for the second program, second current time reference information from a second corresponding program source, wherein the second current time reference information provides information for synchronizing a scheduling clock with a clock of the second corresponding program source;

the processor programmed to derive a first scheduling clock based on the first current time reference information, the first scheduling clock synchronized with the clock of the first corresponding program source:

the processor programmed to initiate the first program processing function based upon the first scheduling clock;

the processor programmed to derive a second scheduling clock based on the second current time reference information, the second scheduling clock synchronized with the clock of the second corresponding program source; and

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the processor programmed to initiate the second program processing function based upon

the second scheduling clock.

2. (Previously presented) The system of claim 1, wherein the first current time reference

information provides a current time-of-day indication.

3. (Previously presented) The system of claim 1, wherein:

the system further comprising a display for displaying a current time-of-day to a user;

the processor is operable to provide an output for updating the display of the current time-

of-day based upon the first current time reference information; and

the system further comprises a filter for filtering the output to inhibit a discontinuous

change in the current time reference information from causing a discontinuous change in the

display of the current time-of-day, and for providing the filtered output to the display.

4. (Previously presented) The system of claim 1, wherein the first programming processing

function is at least one selected from a group consisting of display, record and playback.

5. (Previously presented) The system of claim 4, wherein the group further comprises: program

transmission, program standards conversion, program encryption, program decryption, program

scrambling, and program decoding.

6. (Previously presented) The system of claim 1, wherein the processor is programmed to

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terminate the second program processing function based upon the second scheduling clock.

7. (Previously presented) The system of claim 12, wherein the tuner is operable to received STT data that includes a time reference indicator and associated correction data sufficient to establish a time of transmission of a program by a corresponding broadcast source accurate to within about plus or minus 4 seconds.

8. (Previously presented) The system of claim 1, wherein

the tuner is operable to receive first current time reference information that is based on a first time-of-day clock, and

the tuner is operable to receive second current time reference information that is based on a second time-of-day clock, with the second time-of-day clock being unsynchronized with the first time-of-day clock.

9. (Previously presented) The system of claim 8, wherein the tuner is operable to receive:

first current time reference information that is based on a first time-of-day clock generated at the first corresponding program source; and

second current time reference information that is based on a second time-of-day clock generated at the second corresponding program source.

10. (Previously presented) The system of claim 1, wherein the tuner is operable to receive first current time reference information that comprises time-of-day information.

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11. (Previously presented) The system of claim 1, wherein the processor is programmed to

provide a first scheduling clock that is a time-of-day clock.

12. (Previously presented) The system of claim 1, wherein the tuner is operable to receive first

and second current time reference information that comprises System Time Table (STT) data of

an MPEG compliant data stream.

13. (Previously presented) The system of claim 1, wherein the tuner is operable to receive the

first current time reference information from a first corresponding program source that is a

broadcast source.

14. (Previously presented) The system of claim 1, wherein:

the system comprises a central scheduling clock,

the processor is programmed to provide the first scheduling clock by updating the central

scheduling clock with time information generated based on the first current time reference

information, and

the processor is programmed to provide the second scheduling clock by updating the

central scheduling clock with time information generated based on the second current time

reference information.

15. (Previously presented) The system of claim 1, wherein the processor is programmed to

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maintain, for at least a period of time, both the first scheduling clock and the second scheduling

clock.

16. (Previously presented) A method comprising:

receiving, by an electronic program guide, (1) selection of a first program and a second

program, the first and second programs provided by corresponding first and second program

sources, (2) selection of a first program processing function for the first program, and (3)

selection of a second program processing function for the second program;

receiving, by a tuner, (1) a first current time reference information from the first program

source, wherein the first current time reference information provides information for

synchronizing a scheduling clock with a clock of the first program source, and (2) a second

current time reference information from the second program source, wherein the second current

time reference information provides information for synchronizing a scheduling clock with a

clock of the second program source:

deriving a first scheduling clock based on the first current time reference information,

the first scheduling clock being synchronized with the clock of the first program source;

initiating a first program processing function, for the first program, based upon the first

scheduling clock;

deriving a second scheduling clock based on the second current time reference

information, the second scheduling clock being synchronized with the clock of the second

program source; and

initiating a second program processing function, for the second program, based upon the

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second scheduling clock.

17. (Previously presented) The method of claim 16, wherein the first current time reference information provides a current time-of-day indication.

18. (Previously presented) The method of claim 16, further comprising:

    filtering the first current time reference information and the second current time reference information to smooth a discontinuous change between the first and second current time reference information;

    producing a current time-of-day based on the filtered current time reference information; and

    displaying the produced current time-of-day.

19. (Previously presented) The method of claim 16, wherein:

    the first current time reference information is based on a first time-of-day clock, and

    the second current time reference information is based on a second time-of-day clock, with the second time-of-day clock being unsynchronized with the first time-of-day clock.

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9.   **RELATED EVIDENCE APPENDIX**

None.

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10.   RELATED PROCEEDINGS APPENDIX

None

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